

MEMORANDUM

DATE: October 13, 2010
TO: The Chesapeake Bay Board
FROM: Michael D. Woolson, Senior Watershed Planner
SUBJECT: CBV-11-006 – RJGC Equipment Leasing, 104 Archer's Court

Mr. Jeremy L. Findlay, President, J. Lloyd Builder, Inc., on behalf of RJGC Equipment Leasing, has filed an appeal of the Chesapeake Bay Preservation Ordinance Notice of Violation requirements, dated August 31, 2010. The Notice of Violation required the execution of a Chesapeake Bay Restoration Agreement, the restoration of the RPA with native plantings, and removal of a patio.

On August 25, 2010, staff became aware of the unauthorized patio following a routine inspection at the residence. Staff initiated an investigation and as a result has documented a violation of the County's Chesapeake Bay Preservation Ordinance.

Historical Background Information

On or about July 27, 2009 an Application for Building Permit was submitted for the building of a new single family residence. This lot (PIN 4930280017) has an RPA encroaching upon it from the adoption of the 2004 Chesapeake Bay Preservation Ordinance amendments from a perennial stream. At the time of the original Building Permit application, a Sensitive Area Activity Application form was submitted for the house construction. This application was processed administratively because of the time the lot was platted and the impacts to the RPA were in the landward 50 foot buffer. The exception request was granted for the building of this residence on August 11, 2009. The RPA mitigation plan was also approved at this time. On the permit application, there was no mention of a 6-foot x 12-foot patio to be constructed at the rear of the residence (walk-out basement location). Additionally, Board members have communicated to staff their general resistance to processing after-the-fact permits.

Staff Guidance and Recommendations

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

1. J. Lloyd Builder, Inc. is under contract to this residence for RJGC Equipment Leasing. The builder went through the building permit application for the construction of the primary residence, according to Ordinance requirements and Division guidelines. The builder was aware of the resource protection area on this lot. The builder takes full responsibility for the error in not obtaining proper approvals for this patio (see attached letter).
2. The Chesapeake Bay Preservation Ordinance Sections 23-7 and 23-10 require that authorization and a plan of development be reviewed and approved by the County prior to activities within RPA's.
3. Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance.

The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity; and
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

Staff's guidance to the Board on deciding this matter is as follows:

1. The hardship is shared by other properties immediately adjacent to the appellant's property as well as numerous other properties within Kingspoint that have RPA components located on them.
2. The granting of the appeal in this case may not adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity.
3. The hardship is self-inflicted, as the builder knew the lot was in the RPA and what the proper procedures were to go through the Chesapeake Bay Board for approval, as he did this for the main structure and detached garage.

Should this Board find in favor of staff, the Board should deny the appeal and allow the administrative order to remain in place.

Should the Board find in favor of the appellant, the Board should require that the retaining wall application come before them at the next regularly scheduled Chesapeake Bay Board meeting for review and discussion.

Attachments

1. Notice of Violation, dated August 31, 2010
2. Appeal letter, dated September 10, 2010
3. CBPO Sensitive Area Application Form, dated July 27, 2009, approved August 11, 2009
4. Building Permit application, dated August 11, 2009
5. RPA mitigation plan, approved August 11, 2009